

PART XVI. Advance Fee Loans

§3574.1. Short title

This Part shall be known and may be cited as the “Louisiana Advance Fee Loan Law”.

§3574.2. Definitions

As used in this Part, unless the context otherwise requires:

(1) “Advance fee” means any consideration which is assessed or collected prior to the issuance of a written commitment to make a loan that is binding on the lender, provided that certain conditions precedent are satisfied.

(2) “Borrower” means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

(3) “Loan originator or broker” means any person, except any regulated or supervised financial organization, credit union, licensed commercial or consumer lender, insurance company, consumer loan broker, or mortgage broker or lender, provided that the person excepted is licensed or registered with and subject to regulation or supervision by an agency of the United States or any state and is acting within the scope of the license, charter, or other permit, who:

(a) For, or in expectation of, consideration paid by the borrower, directly or indirectly arranges or attempts to arrange, or offers to fund or make a loan of money, a credit card, or a line of credit.

(b) For, or in expectation of, consideration paid by the borrower, assists or advises a borrower, wherever located, in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or a related guarantee, enhancement, or collateral of any kind or nature.

(c) Acts for, or on behalf of, a loan broker for the purpose of soliciting borrowers.

(d) Holds himself out as a loan broker.

(4) “Office” means the office of financial institutions in the Department of Economic Development.

(5) “Person” means an individual or corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein. A “person” shall not include an agency or instrumentality established or chartered under the laws of the United States.

(6) “Principal” means any officer, director, owner, sole proprietor, partner, member, joint venturer, manager, or other person with similar managerial or supervisory responsibilities for a person who makes or offers to make or broker loans, whatever his job title.

§3574.3. Advance fees; prohibited acts

No loan originator or broker shall:

(1) Assess or collect an advance fee from a borrower to provide services as a loan originator or broker. Notwithstanding the foregoing, a person who originates or brokers commercial loans may accept from a potential borrower an advance expense deposit for commercial loans, but such deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, or credit reports performed by a person independent of the loan originator or broker, and required by the originating lender for the evaluation of the potential borrower's commercial loan application. Any expense deposit which exceeds the actual cost of any appraisal, title search, or credit reports shall be promptly refunded to the borrower or credited to the borrower's account at the time of the commercial loan closing. For purposes of this Part, a "commercial loan" means any loan the purpose of which is not for personal, family, or household use.

(2) Make or use any false or misleading representations or omit any material fact in the offer or sale of his services, or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan originator or broker, notwithstanding the absence of reliance by the buyer.

(3) Make or use any false or deceptive representation in its business dealings.

(4) Make or use any false or deceptive representation to the office or conceal a material fact from the office.

§3574.4. Responsibility of principals

Each principal of a loan originator or broker may be sanctioned for actions by the loan originator or broker, including its agents or employees, engaged in during the course of business of the loan originator or broker.

§3574.5. Investigations; cease and desist orders; administrative fines

A. The office may investigate the actions of any person for compliance with this Part.

B. The office may order a person to cease and desist whenever the office determines that the person has violated, is violating, or will violate any provision of this Part, any rule or order promulgated by the office, or any written agreement entered into with the office.

C. The office may impose and collect an administrative fine against any person found to have violated any provision of this Part, any rule or order promulgated by the office, or any written agreement entered into with the office in an amount not to exceed five thousand dollars for each such violation. Each loan originated or brokered may be considered a separate violation. All fines collected hereunder shall be deposited in the Louisiana Consumer Credit Education Fund, provided such fund is in the existence at the time of payment of the fine.

§3574.6. Investigations; examinations; subpoenas; hearings; witnesses

A. The office may make investigations and examinations upon reasonable suspicion, within or outside of this state as it deems necessary, to determine whether a person has violated or is about to violate any provision of this Part, or any rule or order promulgated thereunder.

B. The office may gather evidence in the matter in any legally appropriate manner. The office may administer oaths, examine witnesses, and issue subpoenas.

C. Subpoenas for witnesses whose evidence is deemed material to any investigation or examination may be issued by the office under the seal of the office commanding such witnesses to appear before the office at a time and place to be therein named, and to bring such books, records, and documents as may be specified, or to submit such books, records, and documents to inspection. Such subpoenas may be served by an authorized representative of the office.

D.(1) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued by the office, the office may petition the district court of the parish in which the person subpoenaed resides or has its principal place of business for an order requiring the person to appear and fully comply with the subpoena. The court may grant injunctive relief restraining the violation of this Part and may grant such other relief including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office has completed its investigation or examination. The office is entitled to use summary proceedings as provided in the Louisiana Code of Civil Procedure, and the court shall advance the cause on its calendar. Costs incurred by the office to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

(2) When it shall appear to the office that the compliance with a subpoena or subpoena duces tecum issued by the office is essential to an investigation or examination, the office, in addition to the other remedies provided for in this Part, may, by verified petition setting forth the facts, apply to the district court of the parish in which the subpoenaed person resides or has its principal place of business for any and all appropriate writs. The court may thereupon direct the issuance of the appropriate writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond on payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

E. Witnesses shall be entitled to the same fees and mileage as they may be entitled to by law for attending as witnesses in the district court, except where such examination or investigation is held at the place of business or residence of the witness.

F. The material compiled by the office in an investigation or examination under this Part is confidential and not subject to the Public Records Act until the investigation or examination is complete. The investigation or examination is not deemed complete if the office has submitted the material or any part of it to any law enforcement agency or other

regulatory agency for further investigation, or for the filing of criminal or civil prosecution, and such investigation and prosecution have not been completed or become inactive.

§3574.7. Injunction to restrain violations

A. Whenever the office determines, from evidence satisfactory to it, that any person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of this Part, or a rule or order promulgated thereunder, the office may bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practice, or engaging therein, or doing any act or acts in furtherance thereof or in violation of this Part to enjoin the person or person from continuing the violation or acts in furtherance thereof. In such court proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring the appearance of any defendant and his employees or agents, and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction.

B. In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the loan originator or broker, including but not limited to the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court. In such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may, with the consent of the presiding judge of the district, require that all suits be assigned to the district court judge appointing the said receiver or administrator.

C. In addition to any other remedies provided by this Part, the office may apply to the court hearing this matter for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the office to have been obtained by them in violation of any of the provisions of this Part. Such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this Section or directly to the persons whose assets were obtained in violation of this Part.

§3574.8. Criminal penalties

Whoever violates any provision of this Part commits a felony and shall be fined not more than fifty thousand dollars, or imprisoned with or without hard labor for not more than ten years, or both.

§3574.9. Actions for damages

A. Any borrower injured by a violation of this Part may bring an action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the borrower to the loan originator or broker, plus reasonable attorney fees and costs. A penalty not to exceed three times the amount of actual damages may also be assessed the loan originator or broker and be awarded to the borrower.

B. Any borrower injured by a violation of this Part may bring an action against the surety bond or trust account, if any, of the loan originator or broker.

C. The remedies provided under this Part are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

§3574.10. Duties and powers of the office

A. The office shall be responsible for the administration and enforcement of this Part. The attorney general for the state of Louisiana may assist and cooperate in and have coordinate investigation and enforcement powers in actions seeking to remedy violations of this Part.

B. The office may adopt such rules as it may deem necessary in the administration of this Part and not inconsistent therewith.